IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

MONDAY, THE 12TH FEBRUARY 2007 / 23RD MAGHA 1928

CRL.A.No. 1726 of 2006()

ST.924/2005 of JUDL. MAGISTRATE OF FIRST CLASS-II, KOTTAYAM
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APPELLANT: COMPLAINANT

SEBASTIAN JOSEPH,
PALAPARAMBIL HOUSE, PERUNNA WEST,
PANACHIKAVU P.O., CHANGANASSERY.

BY ADV. SRI.G.SUKUMARA MENON
SMT.DEEPTHI S.MENON

RESPONDENTS: ACCUSED & STATE:
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1. R.HARIKRISHNAN, PROPRIETOR,
KAVERI DISTRIBUTORS, M.V.ROAD,
PERUNNA, CHANGANASSERY.

2. STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY ADV. SRI.K.SURESH FOR R1
P.P.SRI.S.DILEEP FOR R2

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 12/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K. Thankappan, J.

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Crl.A. No. 1726 of 2006

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Dated this the 12th day of February, 2007

JUDGMENT

Complainant in S.T.No.924/2005 on the file of the Judicial First Class Magistrate's Court-II, Kottayam is the appellant. The complaint was filed under section 138 of the Negotiable Instruments Act. The trial court passed the impugned order acquitting the 1st respondent under section 256 (1) Cr.P.C. stating that the appellant absent and there was no appearance on his behalf. Learned counsel for the appellant submits that the impugned order is no in accordance with the provisions of Section 256 Cr.P.C. and the dictum laid down in a decision of this Court reported in Don Bosco V. Partech Computers Ltd. (2005(2) KLT 1003) and a decision of the Apex Court reported in Associated Cement Co. Ltd. V. Kesavanad (1998(1) KLT 179.

2. A reading of the impugned order would show that the trial court has not complied with the provisions of section 256 Cr.P.C. Though the trial court stated that the appellant had given one more chance to adduce evidence, but the order would not show that the personal appearance of the appellant is necessary. In the decision reported in Donbosco's case it is held that "**when the presence of the complainant was quite unnecessary**

and the Magistrate could proceed with the case by adjourning the same even if there was no representation from the counsel, the Magistrate should have adjourned the case, particularly when steps under Ss.82 and 83 of the Cr.P.C. were pending against the accused." In Associated Cement Co. Ltd. (Supra) the Apex Court held that "i**f the presence of the complainant on that day was quite unnecessary then resorting to the step of axing down the complaint may not be a proper exercise of the power envisaged in the section".**

3. In the facts and circumstances of the case and the principles laid down in the decisions referred to above, this Court is inclined to allow the appeal. Hence, the impugned order is set aside and the matter is remanded to the trial court for fresh consideration. The trial court is directed to proceed with the case from the stage at which the impugned order has been passed.

K.Thankappan,
Judge.

mn.

K. Thankappan,J.

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Judgment

-11-2006